



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. None

SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY NY 11530

COPY MAILED

JUN 14 2005

In re Application of
Nina Rautonen et al.
Application No. 10/663,562
Date of Deposit: September 16, 2003
Attorney Docket No.: 17031
Title: NOVEL USE OF CARBOHYDRATES
AND COMPOSITIONS

OFFICE OF PETITIONS

DECISION ON PETITION UNDER
37 C.F.R. §1.137(a)

This is a decision on the petitions under 37 C.F.R. §§1.53 and 1.137(a)^{1,2}, filed concurrently on April 29, 2005, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed December 10, 2003, which set a shortened statutory period for reply of two (2) months. The Notice indicated that a filing date had not been accorded, drawings were not received, the oath or declaration was missing, and an abstract had not been submitted. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on March 11, 2004.

With the instant petition, petitioner has included the fee associated with the filing of a petition under 37 C.F.R. §1.53, a portion of the fee associated with the filing of a petition under 37

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 Petitioner has entitled his petition "Petition under 37 C.F.R. §1.181" (a petition to withdraw the holding of abandonment) but has stated that he wishes to revive the application which was unavoidably abandoned, which would suggest that he intended to file a petition under 37 C.F.R. §1.137(a). Furthermore, there is no fee associated with the filing of a petition to withdraw the holding of abandonment, the fee for the filing of a petition to revive under the unavoidable standard used to be \$130, and Petitioner has submitted payment in the amount of \$130. As such, it is clear that Petitioner intended to file a petition to revive the application under the unavoidable standard, filed under the wrong section of the C.F.R., and submitted the incorrect amount for his petition fee. The petition will be treated as such.

C.F.R. §1.137(a), declaration, an abstract, and a statement of facts which asserts that the Notice was not received. Petitioner has also submitted a "docketing sheet."

Petition fee requirement

The fee for filing a petition to revive an unintentionally abandoned application under 37 C.F.R. § 1.137(a) is \$500 for a large entity and \$250 for a small entity. Petitioner has submitted payment in the amount of \$130. Petitioner will note that the fees changed as of December 8, 2004. Therefore, requirement number (2) has not been met. The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. §1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)³. The petition does not appear to contain an authorization to charge any deficient fees to a Deposit Account.

In view of the foregoing, this petition must be **DISMISSED**.

Any request for reconsideration or petition under 37 CFR 1.137(a) must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extension of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski. Any renewed petition may be submitted by mail⁴, hand-delivery⁵, or facsimile⁶.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

The petition under 37 C.F.R. §1.53 will not be addressed until the present application has been revived.



**Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**

³ "[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. §1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. §1.137 lacking the requisite petition fee."

⁴ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁵ Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

⁶ (703) 872-9306 - please note this is a central facsimile number.